

Remarks.

The rejection of claims 1,2,6-11 and 40-45 over Sumimoto under 35 USC 102(b) is respectfully traversed.

The reference requires the presence of a basic substance, that is to say Sumimoto deliberately moves the indicator into the basic phase PRIOR to the sterilization phase. This is precisely the opposite of what the present invention requires as clearly set forth in the claims as now clearly amended by the present response.

The generic claims (1, 40 and 41) clearly specify that the exposure to ethylene oxide takes place under acidic or neutral conditions which leads to the reaction (See specification p. 14, line 14) The species claims 43 and 44 have been amended to remove weak acid anions to ensure that the environment is neutral or acidic at the commencement of the test. While the Examiner has not cited new references, the previous action did not mention the question of pH of the test environment, therefore applicant is entitled to amend the claims even after final rejection. The initial presence of a basic substance would mask the effect achieved by the present invention Sumimoto must therefore be withdrawn as a reference and thus the rejection fails. Claims 42 and 45 have been amended to correct the inadvertent misspelling of "quaternary"

The rejection of claims 1-3 and 5-7 over Ignacio under 35 USC 102(e) is respectfully traversed.

It is respectfully submitted that the Examiner errs in the legal/logical basis of her rejection. She would indeed be correct in her position if the limitation was ONLY present in the preamble. Ignacio is silent as to the effect on the activator when contacted with ethylene oxide. Device claims are limited not solely by their structure but also by the properties of the components of the device. The Examiner clearly has no objection to the terms "indicator" or "activator" These are not strictly structural terms but legitimately recitable COMPONENTS, whose properties serve to define the claim as a whole. The purpose and results of Ignacio are TOTALLY unrelated to the present invention, thus even a rejection under 35 USC 103 would not be appropriate since no one skilled in the ethylene oxide detection art would in any way be led to even consider Ignacio. The position is further clarified by the pH limitation in claim 1 discussed above.

The rejection of Claim 4 over (either? sic) Ignacio in view of Kipke under 35 USC 103 is traversed for the reasons given above.

Ignacio is not available as a primary reference (for reasons expressed above) Thus citation of the secondary reference to Kipke adds nothing. Since the basis of combination of references to support an obviousness rejection requires suggestion of using a secondary reference to complete the teaching of a primary reference, and such suggestion is not present, the citation of these to references in combination is unsound and the rejection must be withdrawn.

Applicant has reviewed the Examiner's response to applicants previous arguments. While traversed in part, the reasoning is appreciated. The Examiner is correct with respect to certain anions being basic (ie salts of strong bases and /weak acids). These anions have been removed from claims 43 and 44 It is hoped that the present paper further clarifies applicant's arguments with respect to lonacio. Since it is applicant's view that lonacio is not a good reference for reason that have been set forth, it is not available as a primary or secondary reference in a combination rejection under 35 USC 103.

In view of the foregoing, it would appear that there is no tenable ground for rejection of any of the claims in the present application, and their prompt passage to issue is respectfully solicited. However if minor issues remain, the Examiner is requested to call the undersigned befor issuing an advisory action so that these matters may be telephonically resolved.

This is to certify that the foregoing paper was transmitted by telefax to the Commissioner for Patents at 703 872 9306 on April 19th 2005

Respectfully submitted,



Omri M Behr
Reg # 22940 Cust. # 47375

The Behr Office
325 Pierson Avenue
Edison NJ 08837-3123
Ph: 732 803 6006
Fx: 732 494 6258
Email: omrib@aol.com